

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

GRETTA MARSHALL,

Plaintiff,

v.

THE CBE GROUP, INC., D/B/A CBE  
GROUP,

Defendant.

Case No.: 16-CV-2406-GMN-NJK

**JOINT PRETRIAL ORDER**

After pretrial proceedings in this case, IT IS ORDERED:

**I.**

This is an action for:

Plaintiff claims that The CBE Group (“CBE”) violated the Fair Debt Collection Practices Act by calling her cell phone 189 times, including 10 times at her workplace, in violation of 15 U.S.C. § 1692d. CBE is liable for actual damages under 15 U.S.C. § 1692k(a)(1), additional damages as the court may allow, up to \$1,000, 15 U.S.C. § 1692k(a)(2)(A), and costs of the lawsuit and attorney’s fees, 15 U.S.C. § 1691k(a)(3).

CBE denies that it violated any provisions of the FDCPA. CBE did not make any calls to Plaintiff with the intent to harass, oppress, or abuse Plaintiff. Plaintiff never identified herself during any phone calls, which prohibited CBE’s employees from making any account as “do not call.” Further, many of the calls complained of by Plaintiff are outside the statute of limitations for FDCPA claims. Any violation of the FDCPA, if any occurred, was the result of a bona fide error. Defendant further contends that any harm suffered by Plaintiff was proximately caused by Plaintiff, and/or was the

1 result of actions by a third party not under CBE's control, and that Plaintiff failed to  
2 mitigate her damages, if any.

3  
4 II.

5 Statement of Jurisdiction:

6 This Court has federal question jurisdiction because this case arises out of violation  
7 of federal law, particularly defendant CBE's alleged violations of the Fair Debt  
8 Collection Practices Act, 15 U.S.C. 1692 *et seq.* ("FDCPA"). 28 U.S.C. §1331; *Smith v.*  
9 *Community Lending, Inc.*, 773 F.Supp.2d 941, 946 (D. Nev. 2011).

10  
11 III.

12 The following facts are admitted by the parties and require no proof:

13 Plaintiff: None.

14 Defendant: CBE made phone calls to Plaintiff.

15  
16 IV.

17 The following facts, though not admitted, will not be contested at trial by evidence to the  
18 contrary:

19 Plaintiff: None.

20 Defendant: None.

21 V.

22 The following issues of fact will be determined at trial:

23 Plaintiff: whether CBE caused Plaintiff's telephone to ring, or engaged Plaintiff in  
24 telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass  
25 any person at the called number;

26 The number of such calls;

27 The time of such calls;

28 The number dialed by each call;

1 Whether the number dialed went to Plaintiff's cell phone, workplace, or other;  
2 Whether CBE continued making calls to Plaintiff after Plaintiff asked CBE to stop;  
3 Whether CBE knew or should have known that Plaintiff did not owe the debt in  
4 question;

5 The amount of actual damages and statutory damages, if any, Plaintiff is entitled  
6 to; and

7 Whether the debt CBE attempted to collect was governed by the FDCPA.

8  
9 Defendant: The amount of actual damages and statutory damages, if any, Plaintiff  
10 is entitled to.

11  
12 Whether any violation was the result of a bona fide error.

13 Whether Plaintiff's claims are barred, in whole or in part, by the statute of  
14 limitations.

15  
16 Whether Plaintiff's damages, if any were pre-existing damages not caused by  
17 Defendant.

18  
19 Whether Plaintiff has failed to mitigate damages if any.

20 Whether Plaintiff proximately caused his own damages, if any

21 Whether Plaintiff's damages, if any, were caused by a third party over which  
22 Defendant had no control.

23  
24 VI.

25 The following are the issues of law to be to be tried and determined at trial:

26 Whether CBE violated 15 U.S.C. § 1692d of the FDCPA.

27 (a) The following exhibits are stipulated into evidence in this case and may be so  
28 marked by the clerk:

1  
2 (1) Joint exhibits.

3 Accounts Notes, Bates No. CBE 1-25

4 Phone History, Bates No. CBE 1-46

5 Call Recordings, Bates No. CBE 90-96.

6 Policies and Procedures, Bates No. CBE 128-134

7  
8 (2) Plaintiff's exhibits.

9 Debt Collection Letters, Bates No. CBE 47-53.

10  
11 (b) As to the following additional exhibits, the parties have reached the  
12 stipulations stated:

13 None.

14  
15 (c) As to the following exhibits, the party against whom the same will be offered  
16 objects to their admission on the grounds stated:

17 None.

18  
19 (d) Electronic evidence: [State whether the parties intent to present electronic  
20 evidence for purposes of jury deliberations.]

21 None.

22 (e) Depositions:

23 (1) Plaintiff may offer the following depositions:

24 Gretta Marshall for purposes of refreshing recollection.

25 Terry Johnson, if needed, for all purposes except as it relates to the  
26 Telephone Consumer Protection Act.

27 Almir Husic, if needed.

28 Kristina Nicolich, if needed.

Marc Scheel, if needed.

(2) Defendant will offer the following depositions:

Gretta Marshall, for purposes of impeachment.

Terry Johnson, if needed.

(f) Objections to Depositions:

Plaintiff: None.

Defendant:

Objections to Deposition of Kristina Nikolic

Page and Line Numbers	Objection
2:18-4:25	Lack of relevance
6:12-23	Lack of Personal knowledge
7:5-22	Vague; Witness was not a 30(b)(6) witness
7:23-10:4	Vague and ambiguous; misstates witness' testimony
11:8-12:1	Outside scope of knowledge of witness, Witness was not a 30(b)(6) witness
12:2-20	Objections to questions regarding Manual Clicker Application, which is related to TCPA claim and not relevant to FDCPA claim
21:2-18	Not a 30(b)(6) witness
23:13-23	Vague and ambiguous; Incomplete hypothetical
24:13-25:4	Lack of relevance
26:22-27-3	Preliminary statements; lack of relevance
28:6-14	Calls for speculation
29:3-10	Calls for facts not in evidence
29:1-32:25	Lack of relevance

Objections to Deposition of Mark Sheel:

Page and Line Numbers	Objection
2:1-5:7	Lack of relevance
7:7-8:2	Preliminary statements, lack of relevance
9:13-17	Objection in record withdrawn

1	11:9-15	Objection in record withdrawn
2	13:20-22	Objection in record withdrawn
3	15:12-17:5	Sidebar
4	147:23-18:2	Sidebar
5	18:7-20:16	Relevance
6	28:5-13	Multifarious; Witness was not a 30(b)(6) witness
7	30:4-32:14	Lack of relevance
8	33:6-23	Lack of relevance, relates to TCPA claim
9	34:13-25	Attorney-client communication
10	37:6-14	Objection, Plaintiff's counsel withdrew question
11	39:3-19	Vague and ambiguous
12	40:11-41:18	Outside of the pleadings, not relevant to claims; lack of knowledge by witness
13	41:19-43:6	Lack of relevance
14	44:16-45:1	Sidebar
15	46:23-48:13	Lack of relevance; sidebar
16	49:1-3	Objection in record withdraw
17	49:15	Objection in record withdrawn
18	49:23-25	Objection in record withdrawn
19	50:4-7	Objection in record withdrawn
20	52:17-22	Objection in record withdrawn
21	54:3-15	Sidebar
22	54:24-55:4	Sidebar
23	55:25-56:13	Sidebar
24	56:20-58:12	Lack of relevance, related to TCPA claim
25	58:14-59:10	Sidebar; lack of relevance

Objections to deposition of Almir Husic:

26	Page and Line Numbers	Objection
27	2:9-4:14	Lack of relevance
28	4:15-5:2	Lack of relevance
	6:5-25	Lack of relevance
	15:9-18:7	Lack of relevance, related to TCPA claim

22:21-24:9	Lack of relevance, related to TCPA claim
25:1-4	Objection in record withdrawn
25:18-22	Sidebar
26:9-23	Incomplete hypothetical
27:7-14	Incomplete hypothetical
27:15-23	Calls for speculation
28:2-12	Incomplete hypothetical
30:5-31:19	Lack of relevance; prohibited under Fed. R. Evid. 409, related to other lawsuits
31:20-32:8	Sidebar
32:16-35:3	Related to TCPA case
35:7-16	Sidebar

## VII.

The following witnesses may be called by the parties at trial:

(a) Provide names and addresses of plaintiff's witnesses.

Gretta Marshall

Plaintiff

c/o S David H. Krieger

Haines & Krieger, LLC

8985 S. Eastern Avenue

Suite 350

Henderson, NV 89123

Terry Johnson

c/o Robbie Malone

Malone Akerly Martin PLLC

8750 N. Central Expressway, Suite 1850

Dallas, TX 75231

1 Almir Husic<sup>1</sup>  
2 c/o Robbie Malone  
3 Malone Akerly Martin PLLC  
4 8750 N. Central Expressway, Suite 1850  
5 Dallas, TX 75231

6  
7 Kristina Nicolic  
8 c/o Robbie Malone  
9 Malone Akerly Martin PLLC  
10 8750 N. Central Expressway, Suite 1850  
11 Dallas, TX 75231

12  
13 March Scheel  
14 c/o Robbie Malone  
15 Malone Akerly Martin PLLC  
16 8750 N. Central Expressway, Suite 1850  
17 Dallas, TX 75231

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28 <sup>1</sup> Mr. Husic was not an employee of CBE at the time of his deposition, and may not presently be a CBE employee.



(b) Provide names and addresses of defendant's witnesses.

Gretta Marshall

Plaintiff

c/o David H. Krieger

Haines & Krieger, LLC

8985 S. Eastern Avenue

Suite 350

Henderson, NV 89123

Terry Johnson

c/o Robbie Malone

Malone Akerly Martin PLLC

8750 N. Central Expressway, Suite 1850

Dallas, TX 75231

VIII.

The attorneys or parties have met and jointly offer these three trial dates:

October 22-23, 2018

October 29-30, 2018

November 5-6, 2018

It is expressly understood by the undersigned that the court will set the trial of this matter on one of the agreed-upon dates if possible; if not, the trial will be set at the convenience of the court's calendar

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IX.

It is estimated that the trial will take a total of two days.

APPROVED AS TO FORM AND CONTENT:

Dated: June 26, 2018

**KNEPPER & CLARK LLC**

/s/ Miles N. Clark

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Nevada Bar No. 12796

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Nevada Bar No. 13848

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/s/ Robbie Malone

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Counsel for the CBE Group, Inc.

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X.

ACTION BY THE COURT

This case is set for jury trial on the stacked calendar on Monday, October 29, 2018, at 8:30 a.m. in Courtroom 7D. Calendar call will be held on Tuesday, October 23, 2018, at 9:00 a.m. in Courtroom 7D.

This pretrial order has been approved by the parties to this action as evidenced by their signatures or the signatures of their attorneys hereon, and the order is hereby entered and will govern the trial of this case. This order may not be amended except by court order and based upon the parties' agreement or to prevent manifest injustice.

DATED: July 12, 2018.



UNITED STATES DISTRICT JUDGE